

## REMARKS

Claims 3, 5-10, 59-65, and 80-85 are pending in the application. Support for the amendment may be found throughout the specification and drawings.

### *Claim Rejections – Doctrine of Obviousness-Type Double Patenting*

Claims 5, 6, 60-62, 80, 82, and 83 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-104 of U.S. Patent No. 6,506,402. Said claims have also been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over claims 1-46 of co-pending Application No. 10/390453. Applicant respectfully disagrees.

In regards to claims 5 and 6, said claims have been rewritten and now include the limitations of claim 3 which was not rejected under the judicially created doctrine of obviousness-type double patenting. Since claims 5 and 6 are now dependent upon claim 3, Applicant respectfully requests that the rejection for said claims be withdrawn and claims 5 and 6 allowed.

In reference to claims 60-62, said claims have been amended and now include the limitations of claim 59 which was not rejected under the judicially created doctrine of obviousness-type double patenting. Since claims 60-62 are now dependent upon claim 59, Applicant respectfully requests the rejection for claims 60-62 to be withdrawn and said claims allowed.

In regards to claims 80, 82, and 83, said claims have been rewritten and now included the limitations of claim 77 which was not rejected under the judicially created doctrine of obviousness-type double patenting. In view of the fact that claims 80, 82, and 83 are dependent upon claim 77, Applicant believes claims 80, 82, and 83 to be in condition for allowance.

Regarding claims 77 and 87, Applicant has amended Claims 77 and 87 to more particularly point out and distinctly claim the present invention. Claims 77-79 and 87 have been rejected under 35 U.S.C. §102(b) as anticipated by Forberg et al. Applicant traverses. In particular, Forberg discloses a composition with the source of antibiotic being a pure base, a salt, or a derivative thereof. In contrast, the invention in controversy claims a composition of matter generated by fermentation. Applicant has amended Claims 77 and 87 to further distinguish the present invention. Applicant asserts that this amendment overcomes the 35 U.S.C. §102(b) rejection and claims are in the condition for allowance. In particular, Forberg et al. discloses the inclusion of antibiotics in the form of the pure base, a (sic) salt or of a derivative. Forberg et al. therefore fails to teach a composition of matter formed from fermentation solids including antibiotic formed from a fermentation medium. Claims 78 and 79 are believed to be allowable based on their dependency from amended Claim 77. Removal of the pending rejection is respectfully requested and allowance solicited.

#### ***Allowable Subject Matter***

The Patent Office indicated that claims 3, 6, 7, 9, 10, 59, 61-65, 80, and 82-84 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph and to include all of the limitations of the base claim and any intervening claims. Applicant has rewritten claims 3, 6, 7, 9, 10, 59, 61-65, 80, and 82-84 to more particularly point out and distinctly claim the subject matter which Applicant regards as the invention and included all of the limitations of the base claim and any intervening claims. Thus, Applicant believes claims 3, 6, 7, 9, 10, 59, 61-65, 80, and 82-84 to be in condition for allowance and respectfully requests said claims be allowed.

In addition, dependent claims 5 and 8, 60, and 81 and 85 have been amended and are believed to be in condition for allowance as being dependent upon independent claims 3, 59, and 80, respectively.

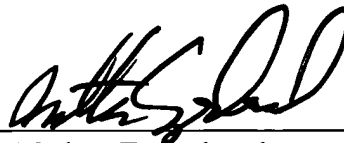
## CONCLUSION

In light of the foregoing, reconsideration and allowance of the claims is earnestly solicited.

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Respectfully submitted on behalf of  
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